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IN THE
COURT OF APPEALS OF INDIANA

EDDIE VAUGHANS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0509-CR-848
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable Michael Jensen, Commissioner
Cause No. 49G20-0303-FA-50900

October 2, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Eddie Vaughans appeals his convictions for Dealing in Cocaine,[1] a class A felony, Possession of Cocaine and a Firearm,[2] a class C felony, and Possession of a Controlled Substance,[3] a class D felony. He presents the following restated issues for review:

1. Was evidence seized pursuant to a search warrant improperly admitted into evidence at trial?

2. Is Vaughans's sentence inappropriate?

We affirm.

On March 28, 2003, Marion County Sheriff's Department Officer Garth Schwomeyer drafted a probable cause affidavit to obtain a search warrant for Vaughans's residence. The affidavit provides in pertinent part:

> ON MARCH 27, 2003 DET SCHWOMEYER AND ASSISTING UNITS OF THE MARION COUNTY SHERIFF'S DEPARTMENT COVERT OPERATIONS GROUP CONTINUED AN INVESTIGATION INTO THE SALES AND DISTRIBUTION OF ILLEGAL NARCOTICS AT **5264 N MICHIGAN ROAD APARTMENT #204, INDIANAPOLIS, MARION COUNTY, INDIANA**. DET SCHWOMEYER FOUND THE PRIMARY RESIDENT OF 5264 N MICHIGAN ROAD #204 TO BE **EDDIE VAUGHANS B/M DOB 05/10/1964 AND A SS# OF 428-21-5211**. THE RESIDENCE AT 5264 N MICHIGAN ROAD #204 IS DESCRIBED AS A THREE STORY, MULTI-FAMILY APARTMENT BUILDING CONSTRUCTED OF BROWNISH BRICK WITH BEIGE SIDING AND HAS A REDDISH BROWN SHINGLED ROOF, APARTMENT NUMBER #204 IS ON THE SECOND FLOOR AND HAS THE NUMBERS 204 AFFIXED TO THE FRONT DOOR ON A COMBINATION DOOR KNOCKER AND PEEP HOLE. (SEE PHOTO)
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> [Photo inserted here in original.]

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[1] Ind. Code Ann. § 35-48-4-1 (West 2004).

[2] I.C. § 35-48-4-6 (West 2004).

[3] I.C. § 35-48-4-7 (West 2004).

ON MARCH 27, 2003 DET SCHWOMEYER UTILIZED A CONFIDENTIAL INFORMANT (CI) TO CONDUCT A CONTROLLED PURCHASE OF WHAT WAS REPRESENTED TO BE $100.00 WORTH OF COCAINE BASE FROM THE RESIDENCE LOCATED AT 5264 N MICHIGAN ROAD #204. THE CI PLACED A TELEPHONE CALL TO EDDIE VAUGHANS TO ARRANGE THE TRANSACTION AND WAS TOLD BY MR VAUGHANS TO COME OVER TO HIS RESIDENCE. DET SCHWOMEYER SEARCHED THE CI IN ACCORDANCE WITH SHERIFF'S DEPARTMENT STANDARD OPERATION PROCEDURE AND FITTED HIM/HER WITH AN AUDIO MONITORING DEVICE. DET SCHWOMEYER SUPPLIED THE CI WITH $100.OO OF OFFICIAL MARION COUNTY SHERIFF'S DEPARTMENT BUY MONEY, WHICH HAD BEEN PREVIOUSLY RECORDED AND WATCHED THE CI PROCEED TO 5264 N MICHIGAN ROAD. DET WILKERSON MAINTAINED VISUAL CONTACT WITH THE CI AS HE/SHE WENT TO APARTMENT #204 AND ENTERED THE APARTMENT. DETECTIVES MONITORED THE CONVERSATION INSIDE THE APARTMENT AS THE **CI EXCHANGED THE PROVIDED CURRENCY FOR TWO SMALL BAGGIES OF OFF WHITE SUBSTANCE** THAT DET SCHWOMEYER BELIEVES BASE (sic) ON HIS TRAINING AND EXPERIENCE AS A NARCOTICS DETECTIVE TO BE COCAINE BASE (CRACK). PON (sic) COMPLETEING (sic) THE TRANSACTION THE CI EXITED THE APARTMENT AND PROCEEDED TO A PREDETERMINED MEET LOCATION UNDER CONSTANT OBSERVATION BY DETECTIVES. DET SCHWOMEYER RECOVERED THE TWO BAGGIES OF SUSPECTED COCAINE FROM THE CI'S RIGHT FRONT POCKET AND SECURED THEM IN A HEAT SEALED ENVELOPE. DET SCHWOMEYER CONDUCTED ANOTHER SEARCH OF THE CI PURSUANT TO STANDARD OPERATING PROCEDURE. DET SCHWOMEYER DEBRIEFED THE CI AND TRANSPORTED THE SUSPECTED NARCOTICS TO THE PROPERTY ROOM FOR ANALYSIS.

ON MARCH 28, 2003 MARION COUNTY CRIME LAB CHEMIST GLEN MAXWELL M9357 FOUND THE SUBSTANCE SUBMITTED FROM THE CONTROLLED BUY ON MARCH 27, 2003 AT 5264 N MICHIGAN ROAD #204, TO BE **0.4860 GRAMS OF COCAINE**.

GIVEN THE ABOVE STATED FACTS AND ATTENDING CIRCUMSTANCES DET SCHWOMEYER BELIEVES AND HAS GOOD CAUSE TO BELIEVE THAT ADDITIONAL NARCOTICS MAY

> BE CONCEALED INSIDE THE RESIDENCE LOCATED AT 5264 N MICHIGAN ROAD #204. DET SCHWOMEYER REQUESTS THAT A **SEARCH WARRANT** BE ISSUED FOR **5264 N MICHIGAN ROAD #204** AND THERE DILIGENTLY SEARCH FOR THE FOLLOWING ITEMS TO WIT: **COCAINE,** OTHER CONTROLLED SUBSTANCES, MONIES, CELL PHONES AND PAGERS USED TO FASCILLITATE (sic) NARCOTICS TRANSACTIONS, WEAPONS USED TO PROTECT SAID INTERESTS, LEDGERS OR RECORDS OF ILLEGAL NARCOTICS TRANSACTIONS, PERSONS ON OR ABOUT THE CURTALAGE (sic) OF THE PROPERTY WHICH MAY BE CONCEALING ABOVE STATED ITEMS, VEHICLES DIRECTLY ASSOCIATED WITH THE OWNER OF THE RESIDENCE EDDIE VAUGHANS.

THE EXHIBITS at 89-90. Based upon this affidavit, a search warrant was issued.

Later that afternoon, on March 28, 2003, a team from the Marion County Sheriff's Department executed the search warrant. Vaughans was in his one-bedroom apartment with an acquaintance, Jerome Elders, during the search. Officers recovered $140 in cash and a small rock of cocaine, worth about $40, from Elders's pockets. They found $2920 in cash rolled up in Vaughans's pocket. Within Vaughans's reach, officers discovered 3.1422 grams of cocaine. Two other rocks of cocaine were found in the apartment, 3.0090 grams in the living room and 3.1422 grams on the kitchen counter. Near the cocaine in the kitchen, officers discovered a box of plastic baggies and a pill bottle containing forty Hydrocodone pills, for which Vaughans did not have a prescription. Finally, a .22 caliber revolver was found under Vaughans's bed, loaded with nine rounds of hollow point ammunition, and a .25 caliber handgun was found between the cushions of the couch in the living room.

Vaughans and Elders were arrested at the scene. On March 31, 2003, Vaughans was charged with Count I, class A felony dealing in cocaine; Count II, class C felony

possession of cocaine; Count III, class C felony possession of cocaine and a firearm; Count IV, class B felony unlawful possession of a firearm by a serious violent felon; and, Count V, class D felony possession of a controlled substance.[4] Count IV was later dismissed by the State.

On April 1, 2005, the trial court held a hearing on Vaughans's motion to suppress evidence obtained as a result of the search. Vaughans claimed that the underlying affidavit for the search warrant failed to establish probable cause. The trial court subsequently denied the motion to suppress. Following a jury trial, in July 2005, Vaughans was found guilty as charged. The trial court entered convictions on Counts I, III, and V. Thereafter, on August 9, 2005, the trial court sentenced Vaughans to forty-five years in prison on Count I, five years on Count III, and two years on Count V. The sentences for Counts I and V were ordered to be served consecutively, for an aggregate sentence of forty-seven years in prison. Vaughans now appeals.

1.

Vaughans initially challenges the trial court's denial of his motion to suppress and the admission of the challenged evidence at trial. As he did below, Vaughans argues that the affidavit used to support the issuance of the search warrant lacked a sufficient factual basis to establish probable cause to search his apartment.

An affidavit demonstrates probable cause to search if it provides a sufficient factual basis to permit a reasonably prudent person to believe that a search of the

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[4] In the same criminal information, the State charged Elders with one count of possession of cocaine, as a class D felony.

premises will uncover evidence of a crime. *Merritt v. State*, 803 N.E.2d 257 (Ind. Ct. App. 2004). In deciding whether to issue a search warrant, the task of the issuing magistrate is to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Love v. State*, 842 N.E.2d 420 (Ind. Ct. App. 2006).

A reviewing court[5] is required to determine whether a substantial basis existed to support the magistrate's finding of probable cause, and doubtful cases are to be resolved in favor of upholding the warrant. *See Walker v. State*, 829 N.E.2d 591 (Ind. Ct. App. 2005), *trans. denied*. "Substantial basis" requires the reviewing court, with significant deference to the magistrate's determination, to focus on whether reasonable inferences drawn from the totality of the evidence support the determination of probable cause. *Love v. State*, 842 N.E.2d 420. Further, the reviewing court may consider only the evidence presented to the issuing magistrate and not post hoc justifications for the search.[6] *Massey v. State*, 816 N.E.2d 979 (Ind. Ct. App. 2004).

Vaughans specifically contends that no factual basis was established in the affidavit to indicate that he was in the apartment during the controlled buy. He claims there is no indication that the confidential informant (CI) was familiar with Vaughans or

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[5] In this instance, "reviewing court" includes both the trial court ruling on a motion to suppress and an appellate court reviewing the decision. *Merritt v. State*, 803 N.E.2d 257.

[6] We note that the State improperly directs us to additional facts that were not included in the probable cause affidavit or otherwise presented to the issuing magistrate.

could identify him upon entering the apartment. Further, Vaughans asserts that the CI failed to provide the police with "other indicia of drug dealing activity". *Appellant's Reply Brief* at 3. Vaughans principally relies on *Merritt v. State*, 803 N.E.2d 257, and *Massey v. State*, 816 N.E.2d 979, to support his contentions on appeal.[7] We will address each in turn.

In *Merritt v. State*, we reversed the trial court's denial of the defendant's motion to suppress, explaining:

> Here, Officer Smiley stated in his affidavit that, while a confidential informant was in Merritt's residence on one occasion, an unidentified black male offered to sell the informant what appeared to be cocaine. Officer Smiley did not state that the unidentified black male frequented, resided, or concealed contraband at 3508 North Butler Avenue nor did he state that there was good cause to believe that the black male would possess cocaine in the residence when the warrant was obtained. Moreover, contrary to the State's assertions, the affidavit did not set forth facts from which a reasonable inference could be drawn that numerous drug transactions had taken place at the residence, or that the residence was a "crack house." Accordingly, the trial court abused its discretion in denying Merritt's motion to suppress.

Merritt v. State, 803 N.E.2d at 260-61 (citations omitted).

We observe that *Merritt* did not involve a controlled buy. Rather, in *Merritt*, the CI independently reported to police that he/she had recently been in a residence when an unidentified, though particularly described, individual offered to sell him/her cocaine. This limited information, which was relied upon exclusively in the probable cause

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[7] Vaughans also cites *Hensley v. State*, 778 N.E.2d 484 (Ind. Ct. App. 2002), in which we found a lack of probable cause to support the search warrant. In *Hensley*, "the affidavit did not link Hensley's alleged purchase of methamphetamine with the premises described in the affidavit." *Id*. at 488. In fact, the affidavit did not indicate that Hensley owned the premises, that she lived there, or that she had any connection with the described premises. Conversely, in the instant case, the affidavit clearly established that the controlled buy took place at the premises described in the affidavit.

affidavit, failed to establish a sufficient nexus between the unidentified individual and the residence. *See Merritt v. State*, 803 N.E.2d 257.

In the instant case, we are presented with entirely different circumstances. Here, using a CI, the police arranged a controlled buy at an apartment known by police to be the primary residence of Vaughans. The probable cause affidavit specifically states that the CI placed a telephone call to Vaughans to arrange the transaction and that the CI was told by Vaughans to come over to his (Vaughans's) residence. Thereafter, while under constant audio and/or visual surveillance by police, the CI went into Vaughans's apartment and purchased cocaine. Although the affidavit does not expressly indicate that Vaughans was the individual who actually sold the cocaine to the CI, this is a reasonable inference considering the totality of the evidence.[8] Vaughans's reliance on *Merritt* is misplaced.

Citing *Massey*, another case that did not involve a controlled buy, Vaughans appears to contend that in order to establish probable cause a CI must observe large quantities of cocaine, money, weapons, and/or "equipment that would indicate the high probability of the selling of cocaine." *Appellant's Brief* at 6. *Massey* does not establish such a requirement. In *Massey*, we acknowledged that the affidavit did not state that Massey owned, occupied, or otherwise used the residence to possess or sell cocaine. *Massey v. State*, 816 N.E.2d 979. Nevertheless, we affirmed the denial of the motion to suppress, observing that unlike in *Merritt*, the dealer was specifically identified in the

[8] Furthermore, even in the unlikely event that another individual completed the transaction, the affidavit establishes that Vaughans arranged the drug transaction that took place at his residence.

affidavit and there were statements indicating that the CI knew Massey and had been in the residence on other occasions when drugs, money, and weapons were present. *Id*. Thus, we concluded that the affidavit and reasonable inferences drawn therefrom provided sufficient evidence for a reasonable person to believe drugs would be found in the residence. *Id*.

Unlike in *Massey*, the affidavit here specifically indicated that Vaughans was the primary resident of the apartment. Moreover, this was a controlled buy in which Vaughans arranged for the cocaine transaction with the CI to be completed at Vaughans's apartment. After speaking with Vaughans, the CI proceeded to the apartment and exchanged $100 for 0.4860 grams of cocaine. The affidavit and reasonable inferences drawn therefrom provided sufficient evidence for a reasonable person to believe drugs would be found in Vaughans's apartment. Therefore, the trial court did not err in admitting the evidence obtained as a result of the search.

2.

Vaughans also claims that his forty-seven-year sentence is excessive and asks that we revise it in accordance with Ind. Appellate Rule 7(B). The State responds, in part, that Vaughans has waived any challenge to the appropriateness of his sentence because he has failed to put forth a cogent argument. *See Gentry v. State*, 835 N.E.2d 569 (Ind. Ct. App. 2005); *see also* Ind. Appellate Rule 46(A)(8)(a) (contentions must be supported by cogent reasoning and include citations to relevant authority). In this regard, the State observes, "while he makes three pages of grandiose claims, Defendant cites no case law or rules, with the exception of the final sentence". *Appellee's Brief* at 9.

The State properly observes that Vaughans cites no authority in support of his sentencing argument, aside from stating in the last sentence: "In accordance with Appellate Rule 7 (B) this court should revise Mr. Vaughans (sic) sentence." *Appellant's Brief* at 10. Further, Vaughans does not even favor us with a standard of review in his Appellant's Brief. *See* App. R. 46(A)(8)(b) (requiring argument to include for each issue a concise statement of the applicable standard of review). The State's waiver argument is certainly well-taken. Nevertheless, we choose to address the appropriateness of Vaughans's sentence.

We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. App. R. 7(B); *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). "We recognize, however, the special expertise of the trial courts in making sentencing decisions; thus, we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*.

As set forth above, Vaughans received an aggregate sentence of forty-seven years in prison. His sentence of forty-five years on the class A felony dealing conviction is five years less than the maximum. *See* Ind. Code Ann. § 35-50-2-4 (West, PREMISE through 2006 Public Laws approved and effective through March 15, 2006). Similarly, his two-year sentence on the class D felony possession conviction, which was imposed consecutive to the dealing conviction, is one year less than the maximum sentence

authorized by statute.[9] *See* I.C. § 35-50-2-7 (West, PREMISE through 2006 Public Laws approved and effective through March 15, 2006). Therefore, we initially observe that Vaughans's general claim that he received the maximum sentence permitted by law is without merit.

While the nature of the offenses includes few if any circumstances beyond the statutory elements of the crimes involved, Vaughans's character is aggravating. Throughout his adult life, Vaughans has amassed an extensive criminal record and has demonstrated that he is unwilling to conform his conduct to the dictates of the law. In fact, he has been arrested at least fifteen times and has been convicted and sentenced to prison for serious offenses in two other states. In Mississippi, he was convicted in 1982 of aggravated assault and sentenced to fifteen years (with ten and one-half years suspended and three years of probation) and convicted of burglary, with a one-year executed sentence, in 1988. After a series of arrests, he then moved on to Illinois where in 1995 he was convicted of illegal possession of a firearm and sentenced to five years in prison and later that same year convicted of manufacturing/delivering controlled substances and sentenced to ten years in prison. We observe that the likelihood of Vaughans reoffending is obviously high, as his extensive contacts with law enforcement and terms of imprisonment have not deterred him from his criminal path.

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[9] The five-year sentence for his class C felony conviction did not affect Vaughan's aggregate sentence because it was imposed concurrent to the class A felony conviction. Therefore, he does not assert any arguments with respect to that sentence. We observe further that Vaughan does not raise a double jeopardy claim with regard to his dual convictions and sentences for dealing in cocaine and possession of (the same) cocaine and a firearm.

Despite the significance of his criminal history and history of arrests, Vaughans would have us focus instead on his alleged "physical (multiple sclerosis and ulcers) and mental health conditions". *Appellant's Brief* at 8. While the trial court found that Vaughans does have some mental and physical ailments, the record before us is virtually devoid of any information regarding the nature and extent of these ailments. With respect to his mental health, the presentence investigation report simply indicates Vaughans reported that he suffers from depression and had been seeing a psychologist while incarcerated. Further, at the sentencing hearing, Vaughans offered only vague and self-serving testimony regarding his mental health.[10] Similarly, even assuming that Vaughans has multiple sclerosis and ulcers, he does not even begin to explain why these conditions should mitigate his sentence. As the trial court and the State observed below, Vaughans has allegedly had multiple sclerosis for over twenty years, yet that has not deterred his criminal ways. Vaughans has wholly failed to establish that his mental and physical conditions should be entitled to anything but minimal mitigating weight.

In sum, we believe Vaughans's criminal history and history of arrests significantly outweigh any mitigating weight due his mental and physical conditions. His poor

[10] Four factors have been identified that bear on the mitigating weight, if any, that should be given to mental illness in sentencing. *Scott v. State*, 840 N.E.2d 376. Those factors are: (1) the extent of the defendant's inability to control his behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or impairment and the commission of the crime. *Id*. The record does not include evidence from which these factors can be considered.

character undoubtedly warrants an extended period of incarceration. Therefore, we conclude that the aggregate sentence imposed by the trial court was not inappropriate.

Judgment affirmed.

MATHIAS, J., and BARNES, J., concur.